

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-08-90019

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER  
ENTERED: SEPTEMBER 15, 2008

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On July 1, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. The complainant alleges that the judge engaged in judicial misconduct while presiding over his most recent petition for habeas corpus.

This complaint is the third filed by this complainant. The complainant's first two complaints, No. 425 and No. 455, concerned a previous habeas petition and were filed against the same district judge and the magistrate judge involved in the proceeding. In Complaint No. 425, filed on January 30, 2006, the complainant charged that the district judge and the magistrate judge wrongfully "refused" to issue a show cause order that he had sought in the case. Then Chief Judge Boudin dismissed the complaint, by order dated April 10, 2006, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii); and (iii). The Judicial Council affirmed the order of dismissal, on August 7, 2006. In Complaint No. 455, filed on April 5, 2007, the complainant charged bias and "judicial fraud." The Chief Judge dismissed Complaint No. 455, on June 1, 2007, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii);

and (iii). The Judicial Council affirmed the order of dismissal, on November 8, 2007.

The complainant now alleges that the judge violated the Rule 3(b) of the "M J Judge Rules [sic]" by allowing the magistrate judge to resubmit the case to the district judge. The complainant references a Consolidated Report and Recommendation issued by the magistrate judge in March, 2008.<sup>1</sup> The complainant seemingly asserts that the presiding district judge lacked authority to review this report and recommendation because neither of the parties filed an objection within 10 days of its issuance. The complainant argues that, based upon the report and recommendation, he was under a court order not to file additional papers, that "an order for a more definite statement is non-existing," and that it was, therefore, improper for the judge to dismiss the case for his failure to submit such a statement. The complainant concludes that, by taking action in the case before it was "duly returned" by the magistrate judge, the judge acted without jurisdiction and in violation of the Constitution, statutory law, the magistrate judge rules, and cited case law.

The complainant also asserts that the judge's memorandum and order reviewing the magistrate judge's recommended rulings was "unsigned, . . . unauthenticated [and] in contempt 44(a) FRCIV. P. [sic]." Lastly, the complainant charges that he "was never sent" an order, issued on a specified date in November, 2007, allotting him 14 days to respond to pending motions.

A review of the docket, court orders and relevant pleadings indicates that the complainant filed this habeas petition in June 2007. Two days after it was filed, the matter was referred to the magistrate judge who issued an order, in September 2007, providing for service of process. In early October, the magistrate judge returned the matter to the district judge, requesting that it be referred back to her upon the filing of a responsive pleading. Later that month, the respondent filed a motion

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<sup>1</sup>Although the complainant references the magistrate judge's involvement in the proceeding, the magistrate judge is not identified as a subject of the present complaint.

for an extension of time to submit an answer and the complainant filed a motion to be released from custody. The district judge allowed the former motion and denied the latter.

In November 2007, the respondent filed a motion for more definite statement in which he asserted that the complainant's habeas petition failed to sufficiently identify the legal grounds upon which the complainant sought relief and the district judge referred the case back to the magistrate judge. From November 2007 through March 2008, the complainant filed a number of motions (to appoint counsel, to be released for an evidentiary hearing, for the respondent to answer, to hold the respondent in contempt, and to expedite a ruling).

Later in March 2008, the magistrate judge issued the report and recommendation cited in the complaint. While the magistrate judge noted that the complainant "continues to file a multitude of frivolous and duplicative 'motions,'" the court determined that the complainant's petition "sufficiently articulates his grounds for relief," and denied the respondent's motion for a more definite statement, as well as the complainant's pending motions. The magistrate judge also "reclassified" one of the complainant's motions as his "more definitive statement" and prohibited the complainant from filing any further motions until the respondent filed a responsive pleading.

Approximately two weeks after issuance of the report and recommendation, the district judge issued a memorandum and order reviewing the magistrate judge's disposition of the pending motions. The court determined that, despite the complainant's pleadings (including his petition, an affidavit, and the motion construed as the more definite statement), it was "unable to discern [the complainant's] constitutional basis for challenging his state conviction." Accordingly, the court ordered the complainant to file within 30 days a "completed petition form identifying the issues he believes have been exhausted in his efforts (if any) to seek relief from the . . . state courts." Id.

(The court noted that the complainant's original petition included answers to only six of the fifteen questions asked.) Therefore, while the court followed the magistrate judge's recommendations with respect to the complainant's motions, it declined to follow the recommended decision on the respondent's motion and stated that the complainant's failure to comply with its order for a more definite statement would result in dismissal of the case.

In May 2008, the judge issued an order noting that the complainant failed to comply with the March order and dismissing the case with prejudice. Also in May, the Court of Appeals denied the complainant's request (that had been filed on April 2008) for a writ of mandamus and an order to compel the district court to enforce the magistrate judge's recommended order.

The complaint is baseless. The complainant essentially alleges that the judge engaged in misconduct when he declined to follow the magistrate judge's recommendation to deny the respondent's motion for a more definite statement. Neither the complaint nor the reviewed record contain any facts indicating that this decision--or any other conduct by the judge in connection with the case--was motivated by bias or animus. To the contrary, the record suggests that the judge made a reasoned determination on the sufficiency of the complainant's pleadings, albeit one with which the complainant disagrees.

Absent suggestion of bias or improper motive--of which there is none--the complainant's allegation is "directly related to the merits of a decision or procedural ruling" and, as such, does not suggest cognizable misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h)(3)(A). Accordingly, the charge that the judge engaged in misconduct when he declined to follow the magistrate judge's recommended ruling is dismissed

pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).<sup>2</sup>

The same reasoning applies to the order of dismissal. The complainant's disagreement with this order (based upon his alleged reliance on the magistrate judge's recommended decision and/or an alleged failure to have received the judge's order requiring submission of a more definite statement) does not alone present a cognizable basis for a misconduct complaint. Accordingly, this charge is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

The complainant's remaining allegations--that the judge's failure to personally sign the memorandum and order was evidence of wrongdoing and that the complainant did not receive an order issued in November 2007--are equally unfounded. As the judge was under no legal or ethical duty to personally sign the memorandum and order, the omission of a signature on the order is not indicative of judicial misconduct.<sup>3</sup> See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A). Finally, while the docket does not indicate that any court order issued in this case on the date specified by the complainant<sup>4</sup>, a clerical error in the mailing of an order would also not be suggestive of judicial misconduct. See id., and Boudin, C.C.J., Amended Order, In re: Complaint No. 406, September 9, 2005.

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90019 is dismissed,

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<sup>2</sup>Although legal error alone is not indicative of judicial wrongdoing, I note that a party's objection is not necessary, under the applicable statutes and rules, for a district judge to modify a magistrate judge's recommended decision. See 28 U.S.C. § 636, Fed.R.Civ.P. 72, and local magistrate judge rules.

<sup>3</sup>Nor is Fed.R.Civ.P. 44, cited by the complainant, relevant to this determination.

<sup>4</sup>The closest order in time is an order issued four days earlier referring the case back to the magistrate judge. This order makes no mention of a response time for pending motions.

pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(ii).

9/15/08  
Date

Sandra L. Lynch  
Chief Judge Lynch